IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

Date of decision: 14.2.2007.

Mithu Singh Vs. State of Punjab

CORAM: Hon'ble Mr. Justice Virender Singh

Present: Ms. Vandna Malhotra, Advocate, for the appellant.
Mr. B.S. Sewak, DAG, Punjab.

Virender Singh, J.

Vide impugned judgment of learned Judge, Special Court Bathinda dated 28.1.2002, appellant Mithu Singh stands convicted under Section 15 of Narcotic Drugs & Psychotropic Substances Act, 1985 (for short 'the Act'), for allegedly keeping in his conscious possession 5 bags of poppy husk (each containing 40 Kgs) and has been sentenced to undergo R.I. for ten years and to pay a fine of Rs.1,00,000/-, in default thereof to further undergo R.I. for two years. Aggrieved by the same he has preferred the instant appeal which has now been argued by Ms. Vandna Malhotra, Advocate, appointed by Punjab Legal Services Authority.

In brief, the case of the prosecution is that on 1.6.1996 S.I. Harpal Singh (PW4) alongwith other police officials was on patrolling in his Government jeep when the appellant was seen coming on a she-camel carrying bags on the same. He was

apprehended on suspicion. One Makhan Singh independent witness was also joined by aforesaid Harpal Singh. After completing all the statutory formalities as envisaged under Section 50 of the Act, a wireless message was sent to DSP Jaswant Singh (PW1) to reach the spot and in his presence the five bags loaded on the she-camel were removed on the ground. All the begs were containing poppy husk. 200 grams of poppy husk was taken out as sample from each bag and the remaining bags on weighment came to be 39 Kgs. 800 grams in each bag. All the samples were sealed by the Investigating Officer bearing inscription 'HS'. The sample seal chit was prepared separately. The sample and the poppy husk were taken into possession vide recovery memo. Seals were handed over to Makhan Singh PW. On the basis of Ruqa sent from the spot of recovery, formal FIR was recorded. Rough site plan was also prepared. She-camel was also taken into possession. The case property was put in the Malkhana. As SHO Tarsem Singh was not present in the Police Station on the date of alleged recovery, the case property and the appellant were produced before him on the next day who verified the entire investigation, affixed his own seal on all the ten parcels and sample seal. The case property and the accused were then produced before the Ilaqa Magistrate, Talwandi Sabo by moving a formal application and after obtaining the formal orders of the Court the case property was deposited with MHC of Police Station as there was lack

of space in the judicial Malkhana. SHO Tarsem Singh kept his own seal with him. On 5.6.1996 the samples were sent to the Chemical Examiner and after the receipt of the report, challan was presented against the appellant. He was charged under Section 15 of the Act by the trial Court.

In order to substantiate the case, the prosecution has examined DSP Jaswant Singh (PW1), the witness to the recovery, Constable Satpal Singh (PW2) who tendered his affidavit Ex.PD, the then SHO Tarsem Singh (PW3) and SI Harpal Singh (PW4), the Investigating Officer.

Makhan Singh, the aforesaid was given up as having been won over by the accused. Certain other witnesses of formal nature were given up as necessary. Report of Chemical Examiner was also tendered.

The plea taken by the appellant was of false implication asserting that he was arrested from his house in the presence of the villagers. In defence he had produced Head Constable Harjiwan Singh (DW1) to show some ambiguity in the records of Malkhana and Makhan Singh the independent witness (DW2).

After appreciating the entire evidence, the appellant stands convicted and sentenced herein above.

I have heard Ms. Vandna Malhotra, learned counsel for the appellant and Mr. B.S. Sewak, DAG, Punjab. With their

assistance I have gone through the entire records.

Ms. Malhotra at the very outset submits that Section 50 of the Act has not been complied with strictly as there is defect in the notice and the appellant deserves acquittal on this flaw alone.

I am not convinced with this limb of argument advanced by Ms. Malhotra. Search of she-camel cannot be said to be a search of a person and, therefore, Section 50 of the Act was not attracted in this case. Even if there are certain irregularities in the notice served upon the appellant, the same would not advance the case of the appellant. Therefore, this argument deserves to be repelled.

Ms. Malhotra then submits that there is flaw in the link evidence as well. The recovery was effected on 1.6.1996; the samples were sent to the Chemical Examiner after four days i.e. 5.6.1996. This delay is fatal especially when the so called independent witness (Makhan Singh), to whom the seal was handed over, has not supported the case of the prosecution. Instead he demolished the prosecution case in defence. Possibility of tampering with the case property is not ruled out and this flaw also dents the case of the prosecution to a great extent.

I am not in agreement with Ms. Malhotra even on this issue. No doubt, Makhan Singh has not supported the case of the prosecution and instead appeared as defence witness, but the said fact by itself cannot be a ground to reject the case of the prosecution when

it is otherwise proved from the other material on record. The case property and the sample seal chit were produced before SHO Tarsem Singh on the next day i.e. 2.6.1996 for verification as he was not available in the Police Station on the date of alleged recovery. After verifying all the facts he had put his own seal on the entire case property. He himself had produced the appellant before Judicial Magistrate Ist Class Talwandi Sabo. The entire case property was also produced before the concerned Magistrate as is clear from the zimni order dated 2.6.1996. The learned Magistrate verified all the seal impressions. An opportunity was also afforded to the appellant to draw another sample but he refused to avail of the same on the ground that he did not want to create evidence against him. From the aforesaid factual position it can very comfortably be said that there was no chance of tampering with the case property at any stage. At the same time mere delay of four days in sending the sample to the Chemical Examiner cannot be said to be fatal to the prosecution. The sample impression chit is duly affixed on Form No.29 and the same was sent to the Chemical Examiner alongwith the samples. I, therefore, do not find any lacuna, whatsoever, in the link evidence for which the appellant can be benefited.

Ms. Malhotra has lastly pointed out certain discrepancies in the statements of the official witnesses but in my view the same are just ignorable being minor ones having no adverse effect. Certain

discrepancies in the evidence of the witnesses are bound to occur with the lapse of time. In the instant case the recovery is effected in the presence of a Gazetted Officer of DSP rank, therefore, taking the case in its totality, it can safely be concluded that the prosecution has been able to prove the charge against the appellant beyond any shadow of reasonable doubt.

Resultantly, while holding the conviction and sentence of the appellant as already recorded by the learned trial Court, I hereby dismiss the instant appeal.

(Virender Singh)
Judge

February 14, 2007.
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